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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-90123; File No. SR-CboeBZX-2020-073]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Rebate Tiers in the Fee Schedule

October 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 5, 2020, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule applicable to its equities trading platform ("BZX Equities") to amend certain Step-Up Tiers.³

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange in particular operates a "Maker-Taker" model whereby it pays credits to members that provide liquidity and assesses fees to those that remove liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for orders priced at or above \$1.00, the Exchange provides a standard rebate of \$0.0020 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits

³ The Exchange initially filed the proposed fee changes on October 1, 2020 (SR-CboeBZX-2020-072). On October 5, 2020, the Exchange withdrew that filing and submitted this filing.

or discounts for satisfying increasingly more stringent criteria.

One of the tiered pricing models is set forth in Footnote 2 of the fee schedule (Step-Up Tiers), which provides Members an opportunity to qualify for an enhanced rebate on their orders that add liquidity where they increase their relative liquidity each month over a predetermined baseline. Tier 1 of the Step-Up Tiers provides an enhanced rebate of \$0.0030 per share for Members with Step-Up Add TCV⁴ from April 2019 equal to or greater than 0.05%. Tier 2 of the Step-Up Tiers provides an enhanced rebate of \$0.0032 per share for Members that have an MPID that (1) has a Step-Up Add TCV from May 2019 equal to or greater than 0.10% and (2) has an ADAV⁵ as a percentage of TCV equal or greater than 0.25%. Lastly, Step-Up Tier 3 provides an enhanced rebate of \$0.0033 per share where a Member has a Step-Up Add TCV from April 2020 equal to or greater than 0.30%. The Exchange notes that step-up tiers are designed to encourage Members that provide displayed liquidity on the Exchange to increase their order flow, which would benefit all Members by providing greater execution opportunities on the Exchange.

The Exchange first proposes to eliminate Step-Up Tier 1. The Exchange no longer wishes to, nor is it required to, maintain such tier and therefore proposes to eliminate Step-Up Tier 1 from the fee schedule and re-number Step-Up Tiers 2 and 3 to reflect the elimination of Step-Up Tier 1. Specifically, the proposed rule change removes this tier as the Exchange would rather redirect resources and funding into other programs and tiers intended to incentivize increased order flow. The Exchange next proposes to amend one of the criteria required under current Step-Up Tier 2 (proposed to be renumbered to Step-Up Tier 1). Particularly, the Exchange proposes to change the threshold of ADAV (i.e., add volume) as a percentage of TCV

⁴ "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

⁵ "ADAV" means average daily added volume calculated as the number of shares added per day.

requirement in the second prong to a threshold of ADV⁶ (i.e., add and remove volume) of TCV and also change the threshold amount from 0.25% to 0.50%. (i.e., the second prong will require that a Member's MPID increase their overall order flow, both adding and removing liquidity, as a percentage greater than or equal to 0.50% of the TCV). The Exchange believes the proposed change incentivizes increased overall order flow to the Book, which may contribute to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem. Additionally, to achieve the Step-Up Tier 2, even as modified (to be renumbered to Step-Up Tier 1), Members are still required to increase the amount of liquidity that they provide on BZX on an MPID basis, thereby contributing to a deeper and more liquid market, which benefits all market participants. The Exchange also notes that Step-Up 2 tier (to be renumbered to Step-Up Tier 1), as modified, continues to be available to all Members and provide Members an opportunity to receive an enhanced rebate, albeit using a more stringent criteria. Moreover, the amount of the current enhanced rebates under Step-Up Tiers 2 and 3 (to be renumbered to Step-Up Tiers 1 and 2) are not changing (i.e., the Exchange proposes to change only the criteria under current Step-Up Tier 2).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a

⁶ "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed amendment to remove Step-Up Tier 1 is reasonable because the Exchange is not required to maintain this tier and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates for displayed liquidity adding orders, including via the existing Step-Up Tiers 2 and 3 (to be renumbered to Step-Up Tiers 1 and 2). The Exchange believes the proposal to eliminate this tier is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tier won't be available for any Member). The Exchange notes that in the past several members satisfied Step-Up Tier 1, but that more recently one Member satisfied Step-Up Tier 1. The Exchange also notes that the proposed change does not preclude any Member, including the Member that was receiving the rebate under Step-Up Tier 1, from achieving the remaining Step-Up tiers to qualify for the remaining enhanced rebates or other available enhanced rebates under other incentive tiers⁹. Additionally, that Member is still entitled to a rebate for its displayed orders adding liquidity (i.e., the standard rebate), albeit a rebate that is lower than the amount under Step-Up Tier 1. The proposed rule change merely results in a Member not receiving a particular enhanced rebate, which as noted above, the Exchange is not required to offer or maintain. Additionally, as

⁹ See e.g., Cboe BYX Equities Fee Schedule, Footnote 1, which provides various Add/Remove Volume Tiers applicable to fee codes B, V, and Y.

noted above, the Member, along with all Members, are eligible to qualify for the remaining Step-Up Tier rebates should they satisfy the respective criteria.

The Exchange believes that the proposed modification to the criteria in Step-Up Tier 2 (to be renumbered to Step-Up Tier 1) is reasonable because the tier continues to provide an opportunity for Members to receive an enhanced rebate (which amount is not changing), albeit using more stringent criteria. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges¹⁰, including the Exchange¹¹, and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of 16 equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.¹²

Moreover, the Exchange believes the Step-Up Tier 2 (to be renumbered Step-Up Tier 1) continues to be a reasonable means to encourage Members to increase their liquidity on the Exchange based on increasing their relative volume above a predetermined baseline on an MPID

¹⁰ See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers.

¹¹ See e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 2, Step-Up Tiers 1-3.

¹² See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers which offers rebates between \$0.0022 - \$0.0034 per share if the corresponding required criteria per tier is met.

basis and now will also incentivize increased overall order flow on an MPID basis. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that the enhanced corresponding rebate is still reasonable based on the difficulty of satisfying the tier's criteria, even as modified, and appropriately reflects the incremental difficulty to achieve the existing Step-Up Tiers.

The Exchange believes that the proposed change to Step-Up Tier 2 (to be renumbered Step-Up Tier 1) represents an equitable allocation of fees and is not unfairly discriminatory because all Members will be eligible for the tier, even as modified, and the corresponding enhanced rebate will apply uniformly to all Members that reach the proposed tier criteria. That is, the proposed tier is designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the proposed enhanced rebate if the tier criteria is met. Additionally, the Exchange believes that a couple of Members have a reasonable opportunity to satisfy the tier's criteria, even as modified. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Member qualifying for the proposed tier, the Exchange anticipates at least two to three Members meeting, or being reasonably able to meet, the proposed criteria; however, the proposed tier is open to any Member that satisfies the tier's criteria. The Exchange also notes that the proposed change will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the corresponding enhanced rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage increased overall order flow to the Book, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹³

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes apply to all Members equally and all Members are eligible for the enhanced rebates offered for Step-Up Tiers 2 and 3 (to be renumbered to Step-Up Tiers 1 and 2, respectively) and will all receive the enhanced rebate if such criteria is met. Additionally, the proposed change is designed to attract additional adding and removing order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members

¹³ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges and off-exchange venues, including 32 alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 19% of the market share.¹⁴ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁵ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁶ Accordingly, the Exchange does not believe

¹⁴ See Cboe Global Markets U.S. Equities Market Volume Summary (September 28, 2020), available at http://markets.cboe.com/us/equities/market_share/.

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁶ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number

SR-CboeBZX-2020-073 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2020-073. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2020-073 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

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¹⁹ 17 CFR 200.30-3(a)(12).